IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Isa Khan & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.471/2007

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Date of Order: July 17, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. RRC Gorsia, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. P.N. Mohanani, for the respondent No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 8-3-2007 passed by the Sessions Judge, Balotra (for short, "the Revisional Court" hereinafter) in Criminal Revision No.22/2004, whereby the revision petition filed by the complainant-respondent No.2 against the order dated 26-6-2004 passed by the Additional Chief Judicial Magistrate, Balotra (for short, "the trial Court" hereinafter) was allowed and the matter was remanded to the trial Court to pass an appropriate order on cognizance.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioners that no specific order has been passed by the Revisional Court to take cognizance of the offences but it has been made clear in the impugned order itself that there is sufficient material to take cognizance for the offences under Sections 304-B and 498-A, IPC.

Section 398 of the Code provides that on examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate, by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged; provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Thus, the provision of Section 398 of the Code makes it clear that the Revisional Court, while exercising the power of revision, can direct to make further inquiry into the complaint. In the instant case, the matter was earlier brought to this Court and by the order dated 10-3-2006, the matter was remanded to

the Sessions Judge to decide it afresh keeping in view the provisions of Section 398 of the Code. In pursuance thereof, the matter has been decided again.

Since there is no specific order to take cognizance, therefore, it cannot be said that the order of the Revisional Court exceeds the provisions of Section 398 of the Code.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs